Filed 7/23/19 Verizon California v. California Dept. of Tax and Fee Administration CA3

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

VERIZON CALIFORNIA, INC., Plaintiff and Appellant, v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, Defendant and Respondent.	C084551 (Super. Ct. No. 34201600196022CUMCGDS)

The Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.)[1] imposes sales and use taxes on retailers and purchasers for the sale, use, storage, or consumption of "tangible personal property" within California. Certain categories of property are excluded from the definition of tangible personal property and therefore not subject to sales and use taxation. Under section 6016.5, tangible personal property does not include

[1] Further undesignated statutory references are to the Revenue and Taxation Code.

"telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers, or conduit by which they are supported or in which they are contained."

Plaintiff Verizon California, Inc. (Verizon) paid use taxes on "completed telephone cables," "completed conduit," and "completed telephone poles" that it purchased for use in its telecommunications system in California. After Verizon's claims for refunds were denied by the State Board of Equalization (the Board), Verizon filed this action against the Board. Defendant California Department of Tax and Fee Administration (CDTFA) has since been substituted for the Board as defendant.[2] The trial court sustained a demurrer to Verizon's first amended complaint, and then sustained a demurrer to Verizon's second amended complaint without leave to amend.

On appeal, Verizon asserts that section 6016.5 excludes the cable, conduit, and poles that are the subject of its claims for refunds from the definition of tangible personal property. We disagree. This appeal raises identical issues to those recently raised and resolved by the Court of Appeal for the Fourth Appellate District, Division One, in *MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration* (2018) 28 Cal.App.5th 635 (*MCI*).[3] We agree with the court in *MCI* that "section 6016.5 excludes only fully installed and completed telephone and telegraph lines from sales and use taxation, not the preinstallation component parts of such lines." (*MCI*, at p. 640.)

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

During the tax periods from July 1, 2000, through December 31, 2011, Verizon, a provider of telecommunications services and products, purchased "various completed telephone cables, conduit, and poles . . . ." Verizon either installed the cable, conduit,

---

[2] In summarizing the procedural background, we refer to the taxing entity as the Board.

[3] The same issues were also raised and resolved by the same court in two nearly identical unpublished cases involving Verizon which were decided on the same day as *MCI*.

and poles itself or subcontracted for the installation. The cable was connected to permanent structures and installed either by burial or through "aerial" installation by hanging the cable on telephone poles or towers. These installations occurred in telecommunications systems within California. Verizon reported and paid California use taxes on its purchases of the completed telephone cables, conduit, and poles for each period at issue on this appeal.

Verizon filed claims for refunds pursuant to sections 6902 and 6904 for allegedly overpaid use tax for each period, plus interest. In seeking these refunds, Verizon asserted that the completed telephone cables, conduit, and poles were not tangible personal property within the meaning of California's Sales and Use Tax Law, and therefore were not subject to use tax. The Board denied Verizon's claims. Verizon commenced this action for a refund pursuant to section 6933.

In a first amended complaint, Verizon asserted a single cause of action. Verizon stated that California imposes a sales tax on all retailers for the privilege of making sales of tangible personal property, and imposes a use tax on the storage, use, or other consumption of tangible personal property. "Tangible personal property" is defined in section 6016 as "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." Verizon stated that section 6016.5 provided an exclusion from that definition of tangible personal property. That section stated, "[n]otwithstanding any other provision of law, 'tangible personal property,' for purposes of this part, does not include telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers, or conduit by which they are supported or in which they are contained." Relying on principles of statutory construction as well as a dictionary definition defining "line" as "a telephone . . . wire or cable," Verizon asserted that, "because the subject cables purchased by [Verizon] during the periods at issue are completed 'telephone' 'lines,' they are, along with the 'poles' and 'conduit' [Verizon] purchased during the periods at issue to support or contain the

telephone lines, expressly excluded from the definition of tangible personal property pursuant to the plain language of . . . [section] 6016.5, and thus are not subject to California sales or use tax." Based on this, Verizon asserted that it was entitled to its claimed refunds.

The Board filed a demurrer to the first amended complaint. The Board asserted that section 6016.5 did not exclude the individual component parts of telephone lines prior to installation from the definition of tangible personal property, but only excluded *installed* telephone lines from that definition. The Board asserted that Verizon's interpretation of section 6016.5 was contrary to the plain wording of the statute, to binding precedent, and was at odds with the statute's legislative history. The Board further asserted that its interpretation of section 6016.5 was entitled to deference. The Board also filed a request for judicial notice with regard to exhibits relevant to the legislative history of sections 6016 and 6016.5. Verizon filed its own request for judicial notice.

The trial court granted both requests for judicial notice. Thereafter, the court sustained the demurrer to the first amended complaint with leave to amend.

Verizon filed a second amended complaint, again setting forth a single cause of action,[4] and the Board filed a demurrer. The Board and Verizon again both filed requests for judicial notice.

---

[4] One of the few amendments in the second amended complaint was that Verizon now described the products it purchased for installation in its telecommunications network as being "completed." For example, in the second amended complaint, Verizon stated that it "purchased telephone poles used to support aerially-installed telephone cables above the ground," and further stated that it "did not assemble the telephone poles but instead purchased only completed poles." Verizon similarly stated that it purchased "completed cable" and "completed conduit." The plaintiff in *MCI* used this language in its factual assertions. (*MCI, supra*, 28 Cal.App.5th at p. 640, fn. 2.)

In a tentative ruling, the trial court granted the parties' requests for judicial notice and sustained the Board's demurrer to the second amended complaint without leave to amend. The court concluded that the plain language of section 6016.5 stated that the cables, poles, tower, and conduits, are only excluded from taxation "when those materials 'are supported [by] or . . . are contained' within a finished product, such as the telephone line being supported by or contained within a pole, tower or conduit." The court continued: "The fact that [Verizon] now alleges that 'the completed cable constituted [Verizon's] telephone lines in its telecommunications system' does not change this conclusion, as [Verizon] alleges that the cables were purchased prior to their installation. [Citation.] Accordingly, the 'completed poles,' 'completed conduit,' and 'completed cable,' were all still purchased as pre-installation component parts, not supported by or contained within a finished product, and thus still not subject to exclusion under section 6016.5." The court rejected Verizon's argument that the statute's use of the present tense demonstrated the legislative intent that the statute was to cover cable to be prospectively installed and contained in conduit or supported by poles. The court further rejected Verizon's contention that the court's interpretation of section 6016.5 would render that statute superfluous on the ground that two other "lines of statutory authority" state that the sale of an entire telephone line structure/system is not taxable. The court found that the statutes raised by Verizon did not address the matter addressed in section 6016.5 so directly as to render its interpretation of that section meaningless. The court further found the ruling in *Chula Vista Electric Co. v. State Bd. of Equalization* (1975) 53 Cal.App.3d 445 (*Chula Vista*) — that section 6016.5 only excludes from the definition of tangible personal property completed electrical, telephone, and telegraph lines, as opposed to components used in the construction or repair of those lines — to be applicable. Among other things, the court determined that Verizon's new allegation in the second amended complaint that it was not a construction contractor did not render the court's holding in *Chula Vista* inapplicable. The court concluded "that section 6016.5

does not exclude (1) telephone and telegraph lines and (2) the poles, towers, or conduit by which lines are supported on [*sic*] in which lines are contained, as [Verizon] contends. Rather . . . , section 6016.5 excludes the entire completed structure consisting of telephone lines and supporting poles or conduit from the definition of tangible personal property." The court also found that the legislative history "bolster[ed]" its conclusion.

In a minute order, the trial court adopted the tentative ruling. In a written order dated March 24, 2017, the trial court granted the parties' separate requests for judicial notice, sustained the Board's demurrer to the second amended complaint without leave to amend, and entered judgment in favor of the Board against Verizon. In a judgment dated April 20, 2017, judgment was entered against Verizon in favor of the Board, the second amended complaint was dismissed with prejudice, and the Board was awarded costs.

DISCUSSION

I. Standard of Review, Pertinent Statutory Provisions, and Rules of Statutory Interpretation

A demurrer tests the sufficiency of the complaint as a matter of law, and it raises only questions of law. (Code Civ. Proc., § 589, subd. (a).) "We review a trial court's decision to sustain a demurrer for an abuse of discretion." (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1014, 1019.) " ' " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the [complaint] a reasonable interpretation, reading it as a whole and its parts in their context." ' " (*Finch Aerospace Corp. v. City of San Diego* (2017) 8 Cal.App.5th 1248, 1251-1252.) "In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory. [Citation.] Where the demurrer was sustained without leave to amend, we consider whether the plaintiff could cure the defect

by an amendment. The plaintiff bears the burden of proving an amendment could cure the defect." (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162.)

Tangible personal property subject to taxation under California's Sales and Use Tax Law "means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." (§ 6016.) "Notwithstanding any other provision of law, 'tangible personal property,' for purposes of this part, does not include telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers, or conduit by which they are supported or in which they are contained." (§ 6016.5.)

In addressing questions of statutory construction, " '[w]e start with the language of the statute, "giv[ing] the words their usual and ordinary meaning [citation], while construing them in light of the statute as a whole and the statute's purpose [citation]." ' [Citation.] ' "The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it.' [Citation.] Accordingly, '[i]f there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.' " ' " (*MCI, supra*, 28 Cal.App.5th at p. 643.)

" 'Nonetheless, "the 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.]" [Citation.] If a statute is susceptible to more than one reasonable interpretation, the court may consider the statute's purpose, the evils to be remedied, the legislative history, public policy, and contemporaneous administrative construction. [Citation.] In addition, the court may

consider the consequences that will flow from a particular interpretation.' " (*MCI, supra*, 28 Cal.App.5th at p. 643.)

"The interpretation of a statute presents a question of law. [Citation.] Accordingly, we interpret section 6016.5 de novo." (*MCI, supra*, 28 Cal.App.5th at p. 643.)

II. Analysis

Verizon asserts that the plain language of section 6016.5, which excludes from the definition of tangible personal property "telephone and telegraph *lines*, . . . and the poles, towers, or conduit by which they are supported or in which they are contained," excludes uninstalled completed cables, completed conduit, and completed poles from the applicability of the use tax. (Italics added.) In construing section 6016.5, our focus, like that of the *MCI* court, is on the word "lines." (*MCI, supra*, 28 Cal.App.5th at p. 643.) As the *MCI* court noted, "we may look to dictionary definitions ' "to determine the usual and ordinary meaning of [the] words in [the] statute." ' " (*Id*. at p. 644, quoting *Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237 Cal.App.4th 411, 433 & citing *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121-1122 ["When attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word."].) " '[R]elevant dictionary definitions are those extant before or at least near in time to the statutory or contractual usage.' " (*MCI*, at p. 644, quoting *Siskiyou County Farm Bureau*, at p. 434.) The *MCI* court resorted to a dictionary which was contemporaneous with the enactment of section 6016.5.[5] (*MCI*, at p. 644.) That dictionary defined "line" as "a 'wire or pair of wires *connecting one telegraph or telephone station with another, or the whole of a system of*

[5] "The Legislature enacted Assembly Bill No. 1086 (1965 Reg. Sess.) (Assembly Bill 1086), which was codified as section 6016.5, in 1965. (Stats. 1965, ch. 1960, § 2, p. 4488.)" (*MCI, supra*, 28 Cal.App.5th at p. 644, fn. 5.)

such wires.' " (*Ibid*., quoting Webster's 2d New Internat. Dict. (1953) p. 1435, col. 3.) From this, the *MCI* court reasoned: "As this definition makes clear, a comprehensive and completed system of cables must be in place for a 'line' to exist. Indeed, a wire or pair of wires cannot *connect* multiple telephone or telegraph stations unless the system at issue is already installed. Nor can 'a system of such wires' exist prior to installation." (*MCI*, at p. 644.) We agree with the *MCI* court that "this contemporaneous dictionary definition of 'line' supports CDTFA's reading of section 6016.5, and our conclusion that preinstallation component parts are subject to taxation." (*MCI*, at p. 644.) As did the plaintiff in *MCI*, Verizon here offers an alternative dictionary definition of "line." Verizon asserts that "line" means " 'wire or cable for telegraph or telephone.' " For the same reasons the *MCI* court concluded that the definition proffered by the plaintiff was not helpful to its case (*ibid*.), we conclude that the very same definition is not helpful to Verizon's identical argument here.

The *MCI* court applied canons of statutory construction, particularly the *noscitur a sociis* canon of construction,[6] in interpreting section 6016.5. (*MCI*, *supra*, 28 Cal.App.5th at pp. 645-647.) Applying the *noscitur a sociis* canon of construction, the *MCI* court interpreted "section 6016.5's reference to 'telephone and telegraph lines' in light of the clause that follows it—'the poles, towers, or conduit by which [the telephone and telegraph lines] are supported or in which they are contained.' " (*MCI*, at p. 646.) The court concluded that "the Legislature's use of present tense verbs in this clause ('are supported' and 'are contained') confirms that a telephone or telegraph line must already be 'supported' or 'contained'—i.e., completed and installed—to fall within the scope of

---

6 *Noscitur a sociis* means " 'a word takes meaning from the company it keeps.' " (*People v. Hernandez* (2017) 10 Cal.App.5th 192, 200.) Under this rule, " ' "[a] word of uncertain meaning may be known from its associates and its meaning 'enlarged or restrained by reference to the object of the whole clause in which it is used.' [Citation.]" [Citation.]' "

section 6016.5." (*MCI*, at p. 646.) The *MCI* court continued: "Had the Legislature intended section 6016.5 to apply to poles, towers, or conduit that would, in the *future*, support telephone or telegraph lines, it could have stated as much. But it did not. Our role in interpreting the statute is 'not to insert what has been omitted, or to omit what has been inserted.' [Citation.] [¶] We are further persuaded that section 6016.5 excludes only completed telephone and telegraph lines because section 6016.5 does not expressly exclude the 'component' parts of such lines. That omission is noteworthy, given that the [Sales and Use Tax Law] expressly exempts 'component' parts of certain other categories of property from sales and use taxation. . . . Where, as here 'different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning.' [Citation.] In accordance with these principles, we presume that the Legislature knew how to exempt the 'component parts' of telephone and telegraph lines (and electrical transmission and distribution lines) from taxation, and that it chose not to do so." (*MCI*, at pp. 646-647.)

Verizon asserts that the use of the present tense in section 6016.5 requires that the statute also be applied using the future tense.[7] The *MCI* court found this argument unavailing, as do we. As that court stated: "In support of this argument, MCI relies on section 11, a default provision of the Revenue and Taxation Code stating that '[t]he present tense includes the past and future tenses; and the future, the present.' Section 5, however, clarifies that the Revenue and Taxation Code's default provisions, including section 11, do not apply if 'the context otherwise requires . . . .' [Citation.] Here, the context of section 6016.5—most notably, the absence of any statutory exclusion for

---

[7] In advancing this argument, Verizon contends section 6016.5 should be read to include the words "or will be." Thus, according to Verizon, the statute should be read so as to exclude from the definition of tangible personal property: " 'telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers or conduit by which they are *[or will be]* supported or in which they are *[or will be]* contained.' "

'component' parts prior to completion of the lines—evinces precisely the type of legislative intent sufficient to override the general provisions of section 11." (*MCI, supra*, 28 Cal.App.5th at p. 647.) The *MCI* court distinguished *State Bd. of Equalization v. Wirick* (2001) 93 Cal.App.4th 411, on which the plaintiff in MCI relied, and on which Verizon relies here. The *MCI* court concluded that, unlike the circumstances in *Wirick*, "[h]ere, by contrast, applying section 11 would *not* harmonize section 6016.5 with any other statutory provision, and would instead alter the statutory language and undermine the statutory purpose of capturing all transactions resulting in the sale and use of tangible personal property." (*MCI*, at p. 648.) We agree with the *MCI* court's analysis.

Next, Verizon asserts, as did the plaintiff in *MCI*, that "[i]f the 'plain' meaning asserted by the trial court is adopted, and the exclusion set forth in Section 6016.5 only applies to the sale of a finished product – in this case an entire telecommunications network – the statute would be rendered superfluous. Such circumstances (i.e., sale of an entire telecommunications network) are already not taxable pursuant to two independent lines of statutory authority: (1) California's long standing occasional sales tax exemption under Section 6367 and corresponding Regulation 1595, and (2) California's treatment of improvements to real property as non-taxable pursuant to Sections 104, 105 and 6051." The *MCI* court rejected this argument, concluding that its reading of section 6016.5 did not render it or the other lines of statutory authority superfluous. (*MCI, supra*, 28 Cal.App.5th at p. 650.) The court also stated: "Even if we were to agree with MCI that section 6016.5 would be rendered superfluous, it would not change the outcome of this appeal. Although 'a construction that renders part of a statute to be surplusage should be avoided [citation], this rule is not absolute and "the rule against surplusage will be applied only if it results in a *reasonable* reading of the legislation" [citation].' [Citations.] Here, applying section 6016.5 as MCI proposes results in an interpretation that is unreasonable, at odds with the plain language of the statute, and contrary to established authority." (*Ibid.*) We agree with this and the additional grounds the *MCI*

court relied upon in rejecting the same contention Verizon raises here. (*Id*. at pp. 648-650.)

Like the plaintiff in *MCI*, Verizon "spends considerable effort attempting to distinguish this case from *Chula Vista* and arguing that the *Chula Vista* decision is erroneous." (*MCI, supra*, 28 Cal.App.5th at p. 651.) The court in *Chula Vista* concluded that, "while electrical transmission and distribution lines are not tangible personal property as that phrase is used in the Sales and Use Tax Law, the component parts of the transmission and distribution line, including the cable used to conduct electricity, are." (*Chula Vista¸ supra*, 53 Cal.App.3d at p. 448.) That court further stated: "section 6016.5 . . . excludes from the definition of tangible personal property only completed electrical, telephone, and telegraph lines, and does not exclude components used in the construction or repair of the lines." (*Chula Vista*, at p. 453.) The *MCI* court concluded that *Chula Vista* was controlling and "reject[ed] MCI's efforts to distinguish or narrow the scope of the *Chula Vista* decision." (*MCI*, at pp. 651-652.) For the reasons set forth by the *MCI* court, we reach the same conclusion and reject the same arguments.

Verizon also asserts that CDTFA's interpretation of section 6016.5 is not entitled to deference, and, to the extent that the trial court held otherwise, its determination constitutes reversible error. As the *MCI* court stated in a footnote, "[b]ecause we decide this appeal based on the plain language of section 6016.5 in CDTFA's favor, it is unnecessary for us to determine the degree of deference that we may afford to CDTFA's interpretations of section 6016.5 . . . ." (*MCI, supra*, 28 Cal.App.5th at p. 654, fn. 12.) We take the same approach. Because we decide this appeal based on the plain language of section 6016.5, which the trial court expressly did as well, we affirm, even if the trial court also afforded deference to CDTFA's interpretation of that section and even if such deference was improperly placed, a determination we need not make here. (See *Lewis v. YouTube, LLC* (2015) 244 Cal.App.4th 118, 121 ["We will affirm if there is any ground on which the demurrer can properly be sustained, whether or not the trial court relied on

proper grounds or the defendant asserted a proper ground in the trial court proceedings"]; *Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031 [same].)

Verizon also faults the trial court for relying on legislative history materials submitted by CDTFA.[8] However, as CDTFA notes, even where legislative intent is expressed in unambiguous terms, and we are required to treat the statutory language as conclusive and not resort to extrinsic aids, we may nevertheless "observe that available legislative history buttresses [our] conclusion." (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1119-1120; accord *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61; *McGee v. Balfour Beatty Construction, LLC* (2016) 247 Cal.App.4th 235, 244.)

Among other things, Verizon asserts that the trial court should not have relied on the legislative history proffered by CDTFA because it was incomplete. The cases on which Verizon relies stand for the proposition that an incomplete legislative history proffered by a party may not be sufficient to be persuasive. (*People v. Prothero* (1997) 57 Cal.App.4th 126, 133 ["The light shed on legislative intent by *Carranza*'s incomplete account of legislative history is but a dim flicker"]; *California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.App.4th 1575, 1584 [party's "argument is not persuasive, as it is based on an incomplete presentation of legislative history"].) The import of these cases, however, is not that the trial court erred in considering a limited number of items from the legislative history, but rather that it is for the court to determine how complete a picture the proffered legislative history paints, and whether it is persuasive. Moreover, in

---

[8] It does not appear that this exact argument was raised in *MCI* or in the other two unpublished cases in which Verizon was the plaintiff. The *MCI* court did discuss legislative history, but in the context of noting that MCI did not direct the court to any legislative history supporting its position, CDTFA's identification of statements in the legislative record supporting the court's interpretation of Assembly Bill 1086, and the results of the court's own research into the legislative record. (*MCI, supra*, 28 Cal.App.5th at pp. 652-654.)

the instant case, both the trial court and this court consider the legislative history only to confirm our determinations as to the meaning of section 6016.5, not to arrive at that interpretation.

Contrary to Verizon's contentions, several legislative history items submitted by CDTFA in its motion are cognizable subjects of judicial notice. (See generally *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26.) These include the May 24, 1965, Assembly Committee on Revenue and Taxation report and the Legislative Analyst's analysis of Assembly Bill 1086. (*Kaufman*, at pp. 32-33.) As CDTFA asserts, the July 8, 1965, memorandum from the Director of the Department of Finance to the Governor is an enrolled bill report, which also constitutes cognizable legislative history. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19; *Kaufman*, at pp. 41-42.) Additionally, we note that the *MCI* court considered each of these three items. (*MCI, supra*, 28 Cal.App.5th at p. 653.)

Two other items offered by CDTFA in its motion for judicial notice relevant to legislative history to which Verizon objects on appeal were an April 13, 1965, memorandum from the Executive Secretary of the Board to the Legislative Secretary and a Tax and Revenue Cost Estimate prepared by the Board in March 1965. Relying on *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, *CDTFA* asserts that at least the latter was properly considered. (*Id*. at p. 401 ["statements of the sponsor of legislation are entitled to be considered in determining the import of the legislation"].) It is not clear which legislative history documents proffered by CDTFA that the trial court considered. In the tentative ruling, the court stated, "even where a statute is clear and unambiguous, the Court may 'observe' the available legislat[ive] history as support that the Court's interpretation is correct. [Citation.] Here, the Court finds that the legislative history, and the Board's consistent application of the statute, further bolster the Court's conclusion as to how section [6016.5] is properly interpreted." The trial court further noted that Verizon did not offer legislative history which supported its own interpretation or

suggested a different result. Contrary to Verizon's assertion, we conclude that it was not error for the trial court to grant CDTFA's motion for judicial notice and to consider these items as confirming its own interpretation of section 6015.5.

Lastly, we note with regard to legislative history, as did the *MCI* court: "Our own research disclosed an additional piece of the legislative record that supports CDTFA's position. In a June 10, 1965 letter to Governor Brown,[9] Assemblyman Alfred E. Alquist, the sponsor of Assembly Bill 1086, advised Governor Brown that his bill would '*allow the state to tax the cost of materials used in constructing transmission lines*,' while '[a]t the same time it [would] relieve private and local government consumers of sales tax on the cost of fabricating these structures'—the same type of argument CDTFA asserts here. (Assemblyman Alquist, sponsor of Assem. Bill No. 1086 (1965 Reg. Sess.), letter to Governor, June 10, 1965.) While not controlling, the bill sponsor's statements further support our construction of section 6016.5." (*MCI, supra*, 28 Cal.App.5th at p. 654, citing *Larkin v. Workers' Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 164, fn. 10 ["While there are often limits to what an interpreter may reasonably infer from an individual legislator's letter [citation], we have considered letters expressing the views of a bill's sponsor where those views are fully consonant with the statutory language and the history of the legislation."], italics added.)

As the *MCI* court concluded: "Collectively, this legislative history buttresses our conclusion that section 6016.5 applies only to completed telephone and telegraph lines, not the component parts thereof. Notably, and consistent with our analysis *ante*, the Legislature did nothing to alter how component parts are taxed. [Citation.] Instead, the legislative history explains that materials used for the construction of telephone and

---

[9] We, too, came upon this letter in our own independent research of the legislative history of Assembly Bill 1086.

telegraph lines were intended to remain taxable, even after the enactment of Assembly Bill 1086." (*MCI, supra*, 28 Cal.App.5th at p. 654, fn. omitted.)

We conclude that the cables, conduit, and poles purchased by Verizon were subject to taxation under the Sales and Use Tax Law, they were not excluded from section 6016's definition of tangible personal property by section 6016.5, and the trial court properly sustained the demurrer to the second amended complaint without leave to amend.

DISPOSITION

The judgment is affirmed. CDTFA shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

/s/
MURRAY, J.

We concur:

/s/
BLEASE, Acting P. J.

/s/
RENNER, J.